

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Establish
California Institute for Climate Solutions.

Rulemaking 07-09-008

**COMMENTS OF THE UNIVERSITY OF CALIFORNIA
ON THE DRAFT PROPOSED DECISION ESTABLISHING
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

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I. INTRODUCTION

The University of California ("UC") is pleased to submit Comments on the "Draft Proposed Decision ("PD") of Commissioner Peevey Establishing California Institute for Climate Solutions ("CICS" or "Institute")," issued February 11, 2008. The University respectfully requests that the Commission approve the Proposed Decision to create a CICS with a total budget of \$600 million, to be used to carry out the mission of benefiting ratepayers by (1) administering grants to facilitate mission-oriented, applied research resulting in practical technological solutions and policy recommendations likely to reduce Greenhouse Gas (GHG) emissions or otherwise mitigate the impacts of climate change in California, (2) speeding transfer, deployment and commercialization of technologies that have potential to reduce GHG emissions or mitigate climate change impacts in California, and (3) funding programs to help the state fill the "green workforce pipeline" by enhancing education and workforce training at all levels. The University offers the following comments and recommendations on specific factual, legal and technical aspects of the PD, along with several proposed modifications.

II. COMMENTS

A. Competition.

1. General Support. The PD specifies that the location of the hub or headquarters of the Institute will be determined through a competitive process (PD, p.4). UC welcomes a competition as a way to promote transparency and bolster support for the selection of the hub headquarters. A competition can stimulate creative ideas and provide an opportunity to solicit more detail about each proposer's vision for how they would structure their support of Institute functions.

2. Scope of Competition. The PD does not exclude for-profit entities from competing to be the host institution. Because of the public purpose of the CICS, we presume this is an oversight. There are many advantages in having the CICS hub hosted at a public institution (e.g., the proposed mechanisms for transferring ratepayer funds are a good fit with a public institution, and public institutions are already accustomed to operating in accordance with various accountability and operational rules applicable to state bodies). That said, other California institutions clearly have considerable capabilities and talents, and we welcome a competition that invites applications from all non-profit California institutions, including both public and private universities. Whichever institution ultimately wins the solicitation to host, the CICS, as described in the PD, will be an enterprise that involves public and private institutions throughout California, both in the governance structure and in carrying out the programmatic missions via grant-funded activity.

3. Entity to Conduct Competition. The PD specifies that the Governing Board is to issue the RFPs and undertake a peer review to rank proposals in order to select the CICS hub (PD, p. 27). However, until there is a hub, the Governing Board will have limited staffing capacity; furthermore, waiting until there is a complete board to get the RFP process started may result in delay. The University of California has considerable experience in running competitive review processes, and would be pleased to offer its assistance to the Commission. We propose that the PD direct the Commission enter into a contract with UC to run the competition on the Commission's behalf, using a panel of qualified external peer reviewers to rank proposals, and that the final selection of a host institution be made by the Board or by its Executive Committee based on those ranked reviews. We offer suggested language to implement this proposal in the final decision in Appendix A, below.

4. Method for Conducting Competition. Regardless of whether the Commission chooses to formally contract with UC or another entity to run the competition, we suggest that it seek input and assistance of academic institutions in crafting the RFP and the competition process. This could be done through issuing a draft RFP very soon, soliciting comments and requests for clarifications and modifications, and perhaps even holding a "bidders' teleconference" to walk through the requirements/criteria and allow for questions. We have included in Appendix B a proposed competition process and schedule. We recommend that the Commission use the RFP process to encourage institutions to provide a detailed description of how they would host the CICS in a way that would best advance its mission, and that applicants be encouraged to propose details about structures, reporting relationships, policies and processes beyond the guidelines and requirements included in the Commission's final decision.

B. Role/Structure of Hub. There is some ambiguity in the draft decision as to the precise role of the institution that hosts the CICS hub, and how the host institution and its employees and infrastructure are to interact with/serve the Institute and its committees and staff. For example, Conclusion of Law #10 states that the competition for the hub is to establish the "geographical location" of the Institute's headquarters, yet other aspects of the PD refer to the hub as responsible for a variety of programmatic activities that would make it more than a mere "geographical" location.

Our understanding is that the intent is for the CICS to operate as a quasi-independent public entity carrying out the mission specified in the Commission's PD, but that this entity is to be hosted within an institution that provides the necessary infrastructure (and that can receive and manage ratepayer funds for the CICS, to be segregated in an account dedicated to CICS). We suggest that the PD clarify this, that the RFP process be used to provide further detail, and that competing institutions be asked to specify in their proposals how they would structure the hub. Examples of areas bidders should address include: Flow of funds: (How will the host

institution receive and process the funds for the CICS, keeping them in a segregated account?); Employment status: (Would the Director and the Institute's employees be employees of the host institution, who report through the Director to the CICS Board?); Infrastructure: (How would the infrastructure and existing systems of the host institution be used to serve the institute?); Space: (Where would the host institution house the hub?); Resources: (How would CICS benefit from intellectual and other resources at the host institution?).

We suggest that competing institutions be given some flexibility as to how to structure the hub (for example, some might choose to house the Institute wholly within their existing organization, some might propose forming a nonprofit corporation such as a 501(c)(3)).

C. Timing of Start-Up. Section 3.32, page 30 of the PD states that the Governing Board's first order of business is the selection of an Institute Director; but as a practical matter, it will be difficult to recruit a Director until it is clear where the position will be located, both geographically and institutionally. Therefore, we suggest that the first order of business be determining the host institution (though, certainly, recruitment for a Director could be started while the hub competition is underway).

D. Education and Workforce Training. There is some ambiguity and potential confusion in the PD's discussion of Education and Workforce training. Section 3.6.1 (PD, p.41) states that the Workforce Training and Education Committee (WTEC) will have as goals filling the green-workforce pipeline by providing job training, developing RFAs and awarding grants for workforce training programs, and educating Californians with an eye toward behavior modification. This language suggests that the WTEC is charged with both delivering job training and education and with providing grants to other institutions around the state to develop and deliver such programs. However, the CICS Charter (Article VIII, Section 3(b)) suggests that the WTEC (there called the EWTC) does not have program delivery as part of its responsibilities.

Also, Section 3.6.1 refers to the WTEC "developing RFAs and awarding grants," with no mention of how the CICS Executive Director and staff are involved in this process. Our presumption is that the grant administration function of the CICS hub would include both research and education/workforce training grants, but this is not clear from the document, and should be made explicit.

The PD also presents conflicting descriptions of who should serve on the WTEC. As we discuss further in Appendix A, these descriptions should be reconciled and corrected so that membership is not restricted to a few specified institutions and agencies. Finally, there is a

confusing reference (p.43, #3) to the WTEC having responsibility for targeting resources to meet workforce training needs “through the CSU/CC system.” Education and workforce training are conducted by a variety of institutions, and the WTEC should not be limited to targeting resources through one or two specified institutions, even though we have no doubt that both the CSU and Community Colleges will play an important role.

- E. Governing Board Role.** The functions and roles of the Governing Board are set out in the CICS Charter (Article IV, Section 1; PD, Appendix A, p.2). The role for the Governing Board is general oversight, rather than day-to-day management, which we agree makes sense. For the CICS to operate efficiently while still maintaining accountability, we recommend that the Executive Director appointed by the Board be given authority to make decisions in the course of carrying out the Institute’s functions, including grant-making, while the Board maintains oversight responsibility and conducts regular rigorous external reviews to ensure that the Executive Director and the Institute as a whole are carrying out their duties consistent with the highest standards. In further reflecting on how to best ensure efficient operations, and minimize the complexities involved in having a 21-member board vote on grant awards, we suggest that language throughout the PD be modified to clarify that the Executive Director is given authority to approve grants, and that the Board’s oversight will be exercised through its regular reviews, rather than through review and approval of individual grant awards.
- F. Structure, Function of Governing Board, Committees.** We provide a number of specific comments in Appendix A about aspects of the PD concerning structure and function of governing board and committees. One issue not clearly addressed by the PD is how the costs of the Board’s own activities will be funded. It is not clear whether the intent is for Board activities to be included in the 10% maximum allocated for hub expenses. In addition to quarterly Board meetings and monthly Executive Committee meetings, the Board has discretion to undertake a number of other actions and activities, and the Director and the host institution would not have the ability to influence such expenditure decisions. We suggest that the Commission consider authorizing a budget for the Board that is separate from the 10% maximum allocated for running the hub.
- G. Grant Administration Policy.** The PD sets out a number of very specific provisions that are to be included in the CICS grants administration policy. We recommend that the PD specify that these are to be used as suggestions or guidelines, but grant authority to the Executive Director to craft specific terms as he or she determines is necessary, for approval by the Governing Board. There are details that warrant careful consideration by grants administration

professionals, rather than receive premature prescription in the Commission's decision. That said, we can comment on a few provisions that we believe need clarification or that may have unintended consequences:

1. **Section 3.5 (PD, p.37). 1(a) Citizenship.** The PD states that a grantee must be a "citizen of California," or employed full-time by a California-based entity. We presume that there is no intent to restrict grants to citizens, and that the term "resident" might be more appropriate.
2. **Section 3.5 (PD, p.37). 1(d) Academic institution.** The PD states that applicants for a programmatic grant must be employed by a "California academic institution." This decision arguably would exclude employees of the National Labs, which presumably is counter to the Commission's intent.
3. **Section 3.5 (PD, p.38). 4(b); Section 3.5.1 (2) (PD, p. 40). Anonymity.** The PD states that the grant review process should normally ensure that peer reviewers do not know the identity or institutional affiliation of an applicant. This is not a typical requirement for peer review, and, in fact, information about the applicant and the institution can be helpful in assessing whether there is sufficient expertise and resources to carry out a proposed project. The PD does provide for exceptions (in 4(b)), but we believe this level of detail should be left to the Institute Director to work out in crafting the grant and peer review policies.
4. **Section 3.5 (PD, p. 38). 5 Sharing of Intellectual Property.** The PD states that grantees shall share intellectual property generated under a CICS grant according to yet-to-be developed protocols. This would presumably be established by the Technology Transfer Subcommittee, and would better be addressed as part of the charge to the Subcommittee (p. 51 and in Article VI, Section 3 of the Charter). In addition, this statement is so broad that it is not clear what concern it is intended to address. It may not be inappropriate to ensure that CICS-funded inventions are available for further CICS-funded research, but mandated sharing that is broader could have the unintended consequence of deterring industry from making the investment necessary to bring an invention to market.

H. Funding Allocations. Several sections of the PD describe the expected break-down of funding allocations (e.g., Section 3.2.2, p.24; Findings of Fact #9 – 13, p.53; Conclusion of Law #7, p.59; Ordering Paragraph #12, p.65;). A maximum of 10% (more in year 1) is to be spent on the costs of running the hub; a minimum of 75% is to be spent on technological research and development grants (though we presume the intent is that this 75% would

also include some research that is not strictly technological); a minimum of 10% is to be spent on workforce and education training programs, and a maximum of 5% is to be spent on technology transfer and commercialization functions. This leaves the Director with little discretion to pursue emerging opportunities. We suggest that these percentages be set out as strong guidelines/expectations, but that the Governing Board be given authority to approve modifications in cases where there is a clear demonstration that it would be in the best interest of carrying out the CICS mission. We offer further specific suggestions in Appendix A.

- I. **Roadmap: Ratepayer Benefit Index.** Section 3.2.1 of the PD (PD, P.16) requires that CICS staff compile and attach to the Roadmap a ratepayer benefit index as a way of evaluating the ratepayer benefit of the research areas proposed by the Roadmap. It requires that the index be submitted to the Governing Board and to the Commission, and specifies that the CICS Director will appear before the Commission to answer questions and receive feedback on the Roadmap and ratepayer benefit index. Section 3.4.1 (PD, p.34) specifies that the Roadmap and the ratepayer benefit index will be the basis for the long-term and short-term strategic plans from which the RFAs will be developed. We are supportive of this process, recognizing that the Commission has a fiduciary duty with respect to wise use of ratepayer funds, and recognizing that the CICS should use ratepayer funds to pursue research and education programs that are beneficial to ratepayer interests. We would support including this process in the Charter.
- J. **Roadmap: Coordination.** The PD recognizes that the CICS should build upon and not unnecessarily duplicate existing efforts. To that end, Section 3.1 (PD, p.8) requires that the Roadmap begin with an inventory of publicly-funded climate change-related research and education efforts, specifying that this process will promote efficiency and facilitate coordination and cooperation among agencies, academic institutions and the private sector. We support this process, recognizing that coordination is critical -- including coordination with agency efforts already underway pursuant to AB 32 (the Global Warming Solutions Act of 2006) which, as noted in Section 3.1.1 (PD, p. 12), is consistent with the mission of the CICS. We expect the Roadmap to be a dynamic document that will be updated regularly to ensure that it continues to incorporate and build upon the work of other agencies. We note that Article VII of the Charter specifies that one of the Director's duties is to interface with the a number of other agencies, the Legislature and the public, and would be supportive of including in that scope an expectation to interface with other agencies that may be conducting work related to climate change and global warming to ensure appropriate coordination.

- K. Payment of Ratepayer Funds in Memorandum Account to CICS.** In order to facilitate timely funding for the CICS start-up, we believe the PD should include language outlining how funds will be made available to fund start-up activities, and specifying that utilities' advice letters propose a uniform mechanism for timely monthly transfer of funds to CICS. We have provided specific suggested language in Appendix A.
- L. Fiscal Reporting.** It appears that the Commission's intent is to require a financial report that encompasses the entire fiscal year (See Section 4.0, PD, p.45, Paragraph #2); yet the requirement is to submit a report 30 days after the close of the fiscal year. Financial records used so soon after fiscal close may not be accurate. We suggest changing the reporting requirement to be 60 (or, preferably 90) days after the close of the fiscal year so that any subgrantee invoices and other outstanding "hub" invoices through the end of the fiscal year could be included in the summary report. As an example, a very large expenditure might occur at the end of the fiscal year (and should be recorded as an expenditure within that year), but payment might not be entered into the ledgers for another 30-60 days (depending on the receipt of the invoice and actual payment). (This change should also be made on P.57, #35; P. 61, #16; and P.66, #19).
- M. Comments on Findings, Conclusions, Ordering Paragraphs and Charter.** We have included in Appendix A specific comments and suggested language regarding the PD's Findings, Conclusions, Ordering Paragraphs, and Charter.

III. CONCLUSION

The University of California believes that the California Institute for Climate Solutions will be of tremendous benefit to the ratepayers and will bolster the State's leadership in finding ways to meet the very real and pressing challenges related to reducing greenhouse gases and mitigating the potentially devastating impacts of climate change. We urge the Commission to authorize establishment of the Institute. The University would be pleased to offer its assistance to the Commission in designing and/or running a fair, transparent, and open competition for selecting the CICS hub/host. We also continue to believe that the CICS could be very successfully housed within UC, located at or near one of our campuses. In any event, we stand ready to work with public and private partners throughout the State to make the CICS a success.

Respectfully submitted,



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APPENDIX A:

SPECIFIC COMMENTS ON FINDINGS, CONCLUSIONS, ORDERS, AND CHARTER

COMMENTS ON FINDINGS OF FACT

Finding of Fact #1 (PD, p. 52): Mission. In specifying the three main prongs of the Institute's mission, the R&D function is described as being carried out through the administration of grants, but grants are not mentioned in the bullet discussing education and workforce training. We presume this is an oversight, as our presumption had been that the Institute's programmatic responsibilities in both research and education/training would be carried out at institutions throughout the State selected through a competitive peer-reviewed process. This could be clarified as follows: "To make grants to fund education and workforce training programs that disseminate climate change related knowledge and skills to California's students and workforce...". This would be consistent with Article VIII, Section 3(b) of the CICS Charter (PD, Appendix A, p.7), which specifies that the Education and Workforce Training Committee is to develop a process for administering grants to carry out its functions.

There are inconsistencies throughout the document regarding the name of the committee charged with working on education and workforce training issues. In some places, it is called the "Education and Workforce Training Committee" (See CICS Charter) and in others it is the (Workforce Training and Education Committee). We recommend correcting inconsistencies.

Finding of Fact #2 (PD, p. 52): Roadmap. This finding states that the Climate Solutions Roadmap will identify those areas of research and technological innovation that are most likely to achieve the greatest GHG reductions. The Commission should specify that the Roadmap will also identify those areas of Education/Workforce training that will have the greatest impact in this area.

Finding of Fact #11 (PD, P.53): Allocation for technology transfer. This finding states that "the Institute will need to allocate some percentage of its R&D budget to technology transfer and commercialization functions, but these costs should not exceed 5% of the total yearly budget for the CICS." This is repeated in **Conclusion of Law #7 (PD, p.59).** This finding was not discussed in the main text of the PD, and the intent is not clear. Does this contemplate that the CICS might allocate funding specifically to stimulate commercialization (e.g., technology demonstration/feasibility projects) as distinct from grant-funded R&D?

Finding of Fact #16 (PD, p.54): Conducting Competition. This finding states that:

"It is reasonable for the CICS Governing Board to select the geographical location of the Institute's headquarters, or hub, competitively chosen, following procedures set forth by the

Governing Board at its first meeting, provided that the headquarters shall be physically located in California. The Institute is also to have a presence in both northern and southern California.”

Until there is a hub, the Governing Board may have limited staffing capacity; furthermore, waiting until there is a complete Board to get the RFP and the competitive process started may result in undesirable delay. UC has considerable experience in running peer review processes, and would be pleased to offer its assistance to the Commission. We propose the following language be inserted into the PD’s Findings:

“The Commission finds it appropriate to enter into a contract with The Regents of the University of California to (a) solicit proposals, through issuance of a written Request for Proposals (“RFP”), from public and private non-profit entities located in California to provide the administrative and scientific services required by the Institute, and (b) convene a panel of external reviewers selected from individuals with expertise in climate research, climate change solutions, and/or establishment/administration of mission-driven institutes to evaluate and rank the proposals submitted, and (c) based on the reviewers’ rankings, recommend to the Governing Board an entity to provide the services described in the RFP. The Regents of the University of California may submit one or more proposals in response to the RFP. The Commission directs the [Executive Committee of the] Governing Board to select the institution to host the CICS based on the ranked reviews and the recommendation of The Regents of the University of California.”

If this suggestion is accepted, Finding #16 should be amended to clarify that the process to be followed is the one set out here (without a need to wait for the full governing board to be convened to set forth a process). Also, the Commission should consider deleting the word “geographical” from Finding #16, presuming that the intent is to seek not only a geographical location, but also an institutional host for the CICS.

Conforming changes should also be made to **Conclusion of Law #10 (PD, P.60).**

Finding of Fact #17 (PD, p.54): Core Functions. This finding states that among the core functions of the Institute’s hub are “developing a grant-making process; issuing RFA; awarding individual grants; overseeing the Roadmapping process conducted by the SRC; managing intellectual property; disseminating information to the public; and reporting to the Commission, the Governing Board, and the public.” We presume that “the hub” carries out these functions through its Director and other staff working with the committees as specified elsewhere.

We have two suggestions about the specific language. First, we believe that the Commission should consider using the phrase “awarding individual and/or programmatic or center grants,” to clarify that the CICS may well determine that grants should be made to centers and not only to individual investigators. Second, we ask that the Commission clarify what it means in specifying that a core function of the CICS hub is managing intellectual property. Under the PD, the CICS will award grants to institutions around the State to carry out research that may result in intellectual

property. Under the typical decentralized technology transfer model that has been so successful in the United States (and that is now being emulated by a number of other countries), such IP is managed by the institution where it is created. A granting organization typically does not have the ability or the resources to “manage” IP, and we believe that this would not be an appropriate role for CICS. The Commission could decide CICS should keep track of inventions produced by grantees under CICS funding, in order to be able to monitor progress in achieving the CICS goals of stimulating technology transfer. This could be done via requiring grantees to submit periodic reports. However, we would consider this to be part of the CICS accountability and reporting functions, and we therefore suggest deleting the phrase “managing intellectual property” from among the core functions of CICS. Conforming changes should also be made to **Conclusion of Law #10 (PD, p.60)**.

Finding of Fact #21 (PD, p.55): Executive Director Search. This finding specifies that the Governing Board will conduct a national search for an Institute Executive Director. We recommend that this be amended to either specify a “broad-based search” or an “international search,” so as not to preclude seeking talent that may exist beyond our national borders.

Finding of Fact #22 (PD, p.55): SRC Membership. This finding specifies that the SRC members are to be chosen by the Governing Board and are all to reside in California. We presume that the intent is that the Executive Director, assisted by his or her staff, would do the work of soliciting recommendations and putting together a slate of potential SRC members for Governing Board approval. If that is the intent, the Commission might consider amending the language to state that the members are “approved” by the Governing Board. In addition, there may be a benefit in allowing flexibility to select some SRC members from outside California. There is significant experience outside the State (and out-of-State members would be less likely to have a connection to potential applicants); these advantages must be balanced with the need to efficiently conduct business and manage travel expenses in conducting SRC activities. We suggest that the Commission leave it to the Executive Director (and, via Governing Board approval, the Board) to determine who would best serve the CICS through membership on the SRC.

Finding of Fact #24 (PD, p.55). Education/Workforce Training. This finding refers to RFAs for research, and to “initiatives” of the Workforce Training and Education Committee. This is confusing, and incorrectly suggests that RFAs are to be used only in selecting research projects. According to the CICS Charter (Article VIII, Section 3(b), PD, Attachment A, p. 7), the CICS education and workforce training initiatives will, just like the research initiatives, be selected via a

competitive RFA or RFP process; if that is the case, the reference in this paragraph to RFAs should be included with respect to both research and education.

Finding of Fact #29 (PD, p.56): WTEC Composition. This finding states that it is reasonable for the Workforce Training and Education Committee to be comprised of experts from “the education, utility, environment and labor sectors, as well as representation from the CSU and Community College systems).” Given that Finding #28 specifies that there is a need for enhanced training at all levels, including high level professionals as well as technical experts, managers and teachers, we presume it is a technical omission to exclude experts from public and private institutions of higher education other than CSU and the Community Colleges from being considered for membership on the WTEC.

We also note that this paragraph is inconsistent with the CICS Charter (Article VIII, Section 2(c), Appendix A, p.7), which specifies that nominees for this committee (which there is called the “Education and Workforce Training Committee”) should be selected from faculties of UC, CSU, CCC, Stanford, USC, and Caltech – this is more inclusive of the higher education institutions, which we think is appropriate, but omits the possibility that experts from other sectors, including industry, might be on the Committee. There is also inconsistency with Section 3.6.2 of the PD (p. 42) .We suggest reconciling these various parts of the PD.

Finding of Fact #35 (PD, p.57): Fiscal Reporting. See Comment in Section II-I, above. We recommend changing the reporting requirement from 30 to 60 (or, preferably, 90) days after the close of the fiscal year to increase the accuracy of the reports. Conforming change should also be made to **Conclusions of Law #16 and 19 (PD, p. 61 and 66).**

Finding of Fact #41 (PD, P.58): Technology Transfer Subcommittee. This finding states that it is reasonable to require that the Governing Board establish a Technology Transfer Subcommittee responsible for taking specific steps outlined in the decision to establish intellectual property and technology transfer policies and protocols specific to the Institute. Some of the activities described as functions of this Subcommittee seem unnecessary and unproductive. Depending on the scope of responsibilities placed on such a Subcommittee, it could be a very time and resource-consuming activity to staff and coordinate such efforts. As a point of reference, it has taken years, dozens of public meetings, and countless hours of staff work for a subcommittee of the California Institute for Regenerative Medicine to come up with Intellectual Property policies governing its grants. We urge the Commission and/or the Governing Board to focus the duties of this subcommittee not on reviewing the policies and practices of the host institution (which are not relevant to grantees, in any case), but instead on advising the CICS and the Director on ways that the CICS can best

stimulate and facilitate technology transfer in order to carry out its mission of speeding transfer from the laboratory to the marketplace of technologies that will reduce GHG emissions and that will help mitigate the impacts of climate change. This would be a better use of the Subcommittee's time and resources than spending too much time reviewing and analyzing policies, practices and agreement language. **See also our comment regarding Article VI, Section 3 of the Charter.**

Finding of Fact #42 (PD, p.58): IP and technology transfer policy. This finding suggests that “until the Institute establishes intellectual property and technology transfer policies and protocols specific to the Institute, all grant agreements shall be consistent with the framework established by Bayh-Dolel.” We believe it is important that the Institute always issues grants that are consistent with (though not necessarily identical to) the terms established by Bayh-Dole. We agree with the statement in the PD (Section 5, p.50), that Bayh-Dole allows sufficient flexibility so that the programmatic objectives of CICS can be met without being at cross-purposes. We recommend deleting the introductory phrase “until the Institute establishes intellectual property and technology transfer policies” and leave the remainder of the sentence “Grant agreements shall be consistent....,” in order to accomplish the presumed goal of maximizing the ability of grantees to leverage federal funds to increase the reach of their CICS funded work.

COMMENTS ON CONCLUSIONS OF LAW

Conclusion of Law #7 (PD, p. 59): Research allocation. This conclusion states the percentages the Institute should allocate to each function. In referencing the amount that should be spent on research (a minimum of 75%), the language refers to “technological R&D.” We presume this is a technical error, since Finding of Fact #1 (PD, p.52) specifies that the mission of CICS includes administering grants to facilitate research that results not only in practical technological solutions but also policy recommendations likely to reduce GHG emissions or otherwise mitigate climate change. We presume that there is no intent to exclude non-technological research from the 75% minimum that is specified as the goal for allocation to grant-funded research. Conforming change should also be made to **Order #12 (PD, p.65).**

Conclusion of Law #10 (PD, p. 60): Core functions of CICS. Please see comments above regarding “Finding of Fact #17.”

Conclusion of Law #12 (PD, p.60): SRC Responsibilities. This conclusion states that “the first and primary function of the SRC should be to create the Climate Solutions Roadmap, followed by developing short-term and long-term goals for the Institute to inform the RFA's; drafting a competitive process for solicitation of grants, reviewing grant applications, and, following a peer

review, recommending grant recipients to the Institute Executive Director for presentation to the Governing Board.” We believe the scope of these duties may be unintentionally broad, and that it may be unfeasible to ask an unpaid committee already engaged in Roadmapping and strategic planning to also routinely participate in designing a competitive review process and in reviewing individual grants (separately from the review that will be performed by the peer review panels). We suggest it may be more feasible and still consistent with the apparent intent to use language that allows the Executive Director to request SRC assistance in these areas as needed. For example:

“the first and primary function of the SRC should be to create the Climate Solutions Roadmap, followed by developing short-term and long-term goals for the Institute to inform the RFA’s. The Executive Director may also request the SRC’s advice and assistance in matters related to the competitive grant solicitation and review process, particularly in designing RFAs consistent with goals set out in the Roadmap and strategic plans, and in considering how to ensure that the grants funded are also consistent with those goals.”

We also note that to make this language consistent with the Charter, the Commission may wish to modify the language to state that the SRC is responsible for “assisting the CICS officers” in developing short and long-term strategic plans.

Conforming changes should be made to Section 3.3.3.of the PD which discusses SRC functions. For example Section 3.3.3 (PD, p.33) states that the SRC will be involved in all planning phases prior to release of RFAs, that the SRC will assist with implementation of the grant administration process, and will review individual grant applications. Again, it should be up to the Executive Director to ask for SRC advice as needed.

Conclusion of Law #16 (PD, p.61). **Annual report.** Change 30 days to 60 or, preferably, 90 days. See comment above, in Finding of Fact #40.

Conclusion of Law #22 (PD, p.62). **Technology Transfer Subcommittee.** See comments under Findings of Fact #41 and 42.

COMMENTS ON ORDERING PARAGRAPHS

Order #1 (PD, p.63). **Mission.** The Order states that CICS is established “to accelerate applied research and development of practical and commercially viable technologies that will reduce greenhouse gas emissions and allow California to adapt to the impacts of climate change.” We presume that this is in no way meant to contradict the mission as stated elsewhere, which also provides for non-technological research and education and training.

Order #3 (PD, p.63). **Start-up Timing/Duties.** The Order states that the co-Chairs of the Governing Board are to meet within 90 days of the Commission’s decision, to initiate steps to

create a Governing Board and an Executive Committee, and to follow through on nominations to the Strategic Workforce Committee and the Workforce Training Committee. It should be noted that according to the text of the decision and the CICS Charter, the Institute Executive Director will compile a list of nominees to these committees (e.g., see 3.3.3, PD, p.32; Charter, Article VIII, Section 2(a)), to be submitted to the Governing Board. The Commission may wish to suggest that the co-Chairs will follow through on “a process” for nominations to the committees.

Order #7 (PD, p.64): Transfer of Funds. In order to specify a clear mechanism to facilitate quick flow of funds to get the CICS started, the following sentence should be added to this paragraph:

“Within 30 days of the date of this workshop the utilities shall begin collecting these additional revenues from customers. The utilities shall each file an advice letter within 10 days of the date of the workshop to modify tariffs to implement this decision. In addition to the ratemaking revisions to existing utilities’ tariffs, the advice letters should propose a uniform mechanism for timely monthly transfer of funds from the utilities’ individual CICS Memorandum Accounts to CICS.¹ The revised tariffs shall become effective no later than 60 days after the effective date of this decision subject to Energy Division determining that they are in compliance with the order.”

Order #8 (PD, p.64): Transfer of Funds. Again, In order for to facilitate quick flow of funds to get the CICS started, the following sentence should be added to this paragraph:

“Payments from the CICS Memorandum Accounts will be on a uniform monthly basis, so that the annual allocation for each utility is paid in full by March 31 of each year of the program commencing in 2009. The one exception to this mechanism is with respect to collection and payment of the first six months’ budget. The utilities will collect and transfer to CICS, half of the first year’s full budget allocation on the first month following the approval of the utilities’ advice letters in order to fund CICS first year start-up activities, including but not limited to the initial competitive host solicitation by peer review, the national executive director search and the initial statewide activity inventory and roadmap development. The payments for the remainder of the first year annual budget will then be made on the uniform monthly basis as described in this decision.”

Order #10 (PD, p. 64). **Extraneous text.** Delete.

Order #11 (PD, p.64). **Segregation of funds.** The language should clarify that “if the University of California hosts the CICS hub,” then the CICS funds may be kept in a UC short-term investment pool account.

Order #12 (PD, p.65). **Kind of Research Funded.** Correct the overly-narrow reference to “technological R&D” (See comment on Conclusion of Law #7).

¹ The Order refers to a singular CICS Memorandum Account. The Commission may need to consider whether there is a single account that can be used to handle funding for all utilities, and if not, create one and determine its appropriate administration.

Order #19 (PD, p.66). **Annual report.** Change 30 days to 60 or, preferably, 90 days. See comment above, in Findings of Fact #16.

COMMENTS ON CHARTER

Article II, Section 1: Mission (PD, Attachment A, p. 1): **Mission.** Again, see our comment about Finding of Fact #1. To clarify that both the Education/Workforce mission and the Research mission are carried out at institutions throughout the State selected through a competitive peer-reviewed process, insert the following language in front of the third bullet: “To make grants to fund education and workforce training programs that”

Article III, Section 1: Governing Board (PD, Attachment A, p. 1): **Members.** The Charter refers to 18, rather than 21 Board members. We presume this is a technical error that will be corrected.

Article V, Section 1: Meetings (PD, Attachment A, p. 1): **Executive Committee.** Specifies that the Executive Committee is to meet monthly. We believe that the co-Chairs of the Board should be given discretion to determine the need for Executive Board meetings, and that it is unnecessary to set this as a requirement in the Charter.

Article VI, Section 3: Technology Transfer Subcommittee (PD, Attachment A, p. 4): This section requires the Governing Board to establish a Technology Transfer Advisory Committee to:

- “(1) Review existing University of California policies and practices pertaining to intellectual property, inventions, and technology transfer,
- (2) Identify barriers to technology transfer,
- (3) Develop intellectual property and technology transfer policies and protocols specific to the Institute,
- (4) Advise the Institute and Director regarding intellectual property and technology transfer matters, and
- (5) Review all proposed agreements for additional non-ratepayer funding for the purpose of identifying potential technology transfer issues.”

See our comments on Finding of Fact #41 and 42. As stated previously, such a committee could be a very time and resource-consuming activity to staff and coordinate, particularly since there may be few or no members of the Governing Board with expertise in this complex area (which is acknowledged in the PD, Section 5, p.51, in recognizing that the Committee will need to establish a means of seeking input from expert professionals).

With respect to paragraph #1, we presume that the reference to UC is meant to suggest that UC’s policies may be determined to be good models that could be adopted and applied to the CICS (perhaps regardless of whether UC is the host institution?). If that is the intent, we suggest

adding the clarifying language “Review and consider adopting existing University of California policies and practices....”

It is also unclear what is contemplated by paragraph #5. This might make sense if it refers to agreements that the Institute Director or Governing Board enter into with potential private, charitable, or government entities to secure additional funding for the Institute. But if it refers to third party funding that a particular grantee intends to use to co-fund a project, then PUC review of the agreement is not appropriate. The responsibility lies with the grantee to ensure that it can meet the requirements of both sponsors if it cannot, then it is the responsibility of the grantee to keep the funds strictly segregated.

Article VI, Section 3: Conflict of Interest Subcommittee (PD, Attachment A, p. 5): This paragraph is inadvertently numbered Section 3 (when the previous paragraph is also Section 3). Suggest renumbering. Also, consistent with our previous comment, we suggest clarifying the intent with the following: “Review and consider adopting existing UC conflict of interest policies.”

Article VIII, Section 2(b): Appointment of Members (PD, Attachment A, p. 7): SRC. This paragraph specifies that nominees for the SRC shall be selected from the faculties of specified California institutions of higher education and specified agencies, National Labs, and “the public/private sectors and the environmental community.” We recommend that inclusion of the public/private sectors be broadly construed so that experts affiliated with other agencies, universities, or other entities are not excluded from consideration.

Article VIII, Section 3(a) : Committee Functions (PD, Attachment A, p. 7): SRC. See our comments on Conclusion of Law #12. We suggest modifying or deleting Section 3(a)(iii) so that the Strategic Research Committee is not charged with reviewing grant proposals in addition to its responsibilities of preparing a Climate Solutions Roadmap and assisting the CICS officers develop short and long term strategic plans. If the paragraph is to be modified, rather than deleted, the following language could be considered:

“iii. To provide advice and assistance to the CICS officers, as requested, on matters related to the competitive grant solicitation and review process.”

APPENDIX B. PROPOSED COMPETITION PROCESS/SCHEDULE

This schedule presumes quick issuance of draft RFP following PUC decision; timeline may be extended depending on content of final PUC decision and procedure adopted with respect to conducting competition.

Schedule

	Event	Key Date
1	Issue Draft RFP and Solicitation for Comments/Requests for Clarifications or Modifications	3/14/2008
2	Deadline to Receive Comments/Requests for Clarifications or Modifications	3/28/2008
3	Issue Final RFP	4/4/2008
4	Deadline to Receive Letter of Intent from Proposers	4/11/2008
5	Governing Board Solicits Nominations for Review Panel	4/11/2008
6	Proposals Due	5/30/2008
7	Proposals Submitted to Review Panel	6/03/2008
8	Review Panel Submits Rankings and Recommendations to Governing Board	7/01/2008
9	Governing Board Announces Final Decision	7/14/2008

Proposed Process:

- The Public Utilities Commission contracts with UC's Office of the President or another entity to run a competition on its behalf (or, alternatively, runs the competition itself with informal input from academic institutions and other stakeholders);
- A draft RFP is issued shortly after the PUC's decision, with a 2-week comment period (inviting comments, requests for clarifications/modifications to the draft RFP). Institutions should already be thinking about whether they will apply.
 - o Entity running competition to consult with CICS co-Chairs regarding developing weighted criteria to be used in ranking proposals.
- A final RFP is issued 1 week after comments are due.
- Institutions are asked to submit Letters of Intent within 1 week. This will allow the entity running the competition to know what to plan for, so that it can begin recruiting reviewers.
 - o Entity running competition selects reviewers, sets meeting date(s).
- Institutions have 6 – 8 weeks to submit proposals (8 weeks is preferable).
- Proposals are forwarded to external review panel (individuals from outside California with expertise in climate change science/education, climate solutions, and/or establishment/management of research/grant-making institutes).
- Within 4 weeks, review panel submits rankings to the entity running the competition, which forwards them with a recommendation of order-ranked proposals to the Governing Board;
- Governing Board announces hub selection in mid July

CERTIFICATION OF SERVICE

I, Lucy Adams, hereby certify that, on March 4, 2008, I caused a copy of the foregoing document, entitled:

**COMMENTS OF THE UNIVERSITY OF CALIFORNIA
ON THE DRAFT PROPOSED DECISION ESTABLISHING
CALIFORNIA INSTITUTE FOR CLIMATE SOLUTIONS**

to be served on the parties to this proceeding by electronic mail to the electronic mail addresses on the service list maintained on the Commission's Web site for this proceeding, as indicated on the following page. First class mail will be used if electronic service cannot be effectuated.

I certify that the above statements are true and correct.

Dated:, March 4, 2008, at Oakland, CA.

/s/

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